



Reprinted
January 28, 2000

SENATE BILL No. 233

DIGEST OF SB 233 (Updated January 27, 2000 4:54 PM - DI 100)

Citations Affected: IC 23-2; IC 27-1; IC 27-8.

Synopsis: Viatical settlement contract. Amends the definition of "security" in the Indiana securities law to include viatical settlement contracts or interests in viatical settlement contracts. Amends the life insurance incontestability provisions to allow a policy that is part of a viatical settlement contract to be contested for up to 6 years from the date of issue in the case of fraud in the application for life insurance benefits under the policy. Amends the definition of "viatical settlement contract" and excludes from the definition certain agreements and the provision of accelerated benefits under a life insurance policy.

Effective: Upon passage.

Paul, Mrvan

January 10, 2000, read first time and referred to Committee on Insurance and Financial Institutions.
January 24, 2000, amended, reported favorably — Do Pass.
January 27, 2000, read second time, amended, ordered engrossed.

C
O
P
Y

SB 233—LS 6697/DI 97+



Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

SENATE BILL No. 233

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-2-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter,
3 unless the context otherwise requires:
4 (a) "Commissioner" means the securities commissioner provided for
5 in ~~IC 23-2-1-15(a)~~ **section 15(a) of this chapter**.
6 (b) "Agent" means an individual, other than a broker-dealer, who
7 represents a broker-dealer or issuer in effecting or attempting to effect
8 purchases or sales of securities. A partner, officer, or director of a
9 broker-dealer or issuer or a person occupying a similar status or
10 performing similar functions is an agent only if the person effects or
11 attempts to effect a purchase or sale of securities in Indiana. "Agent"
12 does not include an individual who represents an issuer in:
13 (1) effecting transactions in a security exempted by section
14 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(6), 2(a)(7), or 2(a)(10) of this
15 chapter;
16 (2) effecting transactions exempted by section 2(b) of this
17 chapter;

SB 233—LS 6697/DI 97+



C
O
P
Y

1 (3) effecting transactions with existing employees, partners, or
2 directors of the issuer, if no commission or other remuneration is
3 paid or given directly or indirectly for soliciting a person in
4 Indiana; or

5 (4) effecting transactions in Indiana limited to those transactions
6 described in Section 15(h)(2) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78o).

8 (c) "Broker-dealer" means a person engaged in the business of
9 effecting offers, sales, or purchases of securities for the account of
10 others or for the person's own account. "Broker-dealer" does not
11 include:

12 (1) an agent;

13 (2) an issuer with respect to the offer or sale of the issuer's own
14 securities;

15 (3) a bank, savings institution, or trust company; or

16 (4) a person who has no place of business in Indiana if the person
17 effects transactions in Indiana exclusively with:

18 (i) the issuers of the securities involved in the transactions;

19 (ii) other broker-dealers; or

20 (iii) banks, savings institutions, trust companies, insurance
21 companies, investment companies (as defined in the
22 Investment Company Act of 1940, as in effect on December
23 31, 1990), pension or profit-sharing trusts, or other financial
24 institutions or institutional buyers, whether acting for
25 themselves or as trustees, whether or not the offeror or any of
26 the offerees is then present in Indiana.

27 (d) "Fraud", "fraudulent", "deceit", and "defraud" mean a
28 misrepresentation of a material fact, a promise or representation or
29 prediction not made honestly or in good faith, or the failure to disclose
30 a material fact necessary in order to make the statements made, in the
31 light of the circumstances under which they were made, not
32 misleading. This definition does not limit or diminish the full meaning
33 of those terms as applied by or defined in courts of law or equity. These
34 terms are not limited to common law deceit.

35 (e) "Guaranteed" means guaranteed as to payment of principal,
36 interest, or dividends.

37 (f) "Issuer" means a person who issues or proposes to issue a
38 security, except that with respect to certificates of deposit, voting-trust
39 certificates, or collateral-trust certificates, or with respect to certificates
40 of interest or shares in an unincorporated investment trust not having
41 a board of directors or person performing similar functions or of the
42 fixed, restricted management, or unit type. The term "issuer" means the

C
O
P
Y

1 person or persons performing the acts and assuming the duties of
 2 depository or manager pursuant to the provisions of the trust or other
 3 agreement or instrument under which the security is issued.

4 (g) "Nonissuer" means not directly or indirectly for the benefit of the
 5 issuer.

6 (h) "Person" means an individual, a corporation, a limited liability
 7 company, a partnership, an association, a joint-stock company, a trust
 8 where the interests of the beneficiaries are evidenced by a security, an
 9 unincorporated organization, a government, or a political subdivision
 10 of a government.

11 (i)(1) "Sale" or "sell" means a contract of sale of, contract to sell, or
 12 disposition of, a security, or interest in a security for value.

13 (2) "Offer" or "offer to sell" means an attempt or offer to dispose of,
 14 or solicitation of an offer to purchase, a security, or interest in a
 15 security for value.

16 (3) "Transaction" and "transactions" include the meanings of "sale",
 17 "sell", "offer", "offer to sell", and "purchase".

18 (4) "Purchase" means an acquisition, direct or indirect, of a security
 19 or an interest in a security for value.

20 (5) A security given or delivered with, or as a bonus on account of,
 21 a purchase of securities or any other thing is considered to constitute
 22 part of the subject of the purchase and to have been offered and sold for
 23 value.

24 (6) A purported gift of assessable stock is considered to involve an
 25 offer and sale.

26 (7) A sale or offer of a warrant or right to purchase or subscribe to
 27 another security of the same or another issuer, as well as a sale or offer
 28 of a security that gives the holder a present or future right or privilege
 29 to convert into another security of the same or another issuer, is
 30 considered to include an offer of the other security.

31 (8) The terms defined in this subsection do not include:

32 (i) a bona fide secured transaction in or loan of outstanding
 33 securities;

34 (ii) a stock dividend, whether the corporation distributing the
 35 dividend is the issuer of the stock or not, if nothing of value is
 36 given by the stockholders for the dividend other than the
 37 surrender of a right to a cash or property dividend when each
 38 stockholder may elect to take the dividend in cash or property or
 39 in stock; or

40 (iii) an act incident to a judicially approved reorganization in
 41 which a security is issued in exchange for one (1) or more
 42 outstanding securities, claims, or property interests, or partly in

C
O
P
Y



1 such exchange and partly for cash.

2 (j) "Securities Act of 1933", "Securities Exchange Act of 1934",
3 "Public Utility Holding Company Act of 1935", and "Investment
4 Company Act of 1940" mean the federal statutes of those names, as in
5 effect on December 31, 1990.

6 (k) "Security" means a note, stock, treasury stock, bond, debenture,
7 evidence of indebtedness, an interest in a limited liability company or
8 limited liability partnership and any class or series of an interest in a
9 limited liability company or limited liability partnership (including any
10 fractional or other interest in an interest in a limited liability company
11 or limited liability partnership), certificate of interest or participation
12 in a profit-sharing agreement, commodity futures contract, option, put,
13 call, privilege, or other right to purchase or sell a commodity futures
14 contract, margin accounts for the purchase of commodities or
15 commodity futures contracts, collateral-trust certificate,
16 preorganization certificate or subscription, transferable share,
17 investment contract, **viatical settlement contract, any fractional or**
18 **pooled interest in a viatical settlement contract**, voting-trust
19 certificate, certificate of deposit for a security, certificate of interest or
20 participation in an oil, gas, or mining title or lease or in payments out
21 of production under the title or lease, an automatic extension or
22 rollover of an existing security, or, in general, an interest or instrument
23 commonly known as a "security", or a certificate of interest or
24 participation in, temporary or interim certificate for, receipt for,
25 guarantee of, or warrant, option, or right to subscribe to or purchase,
26 any of the foregoing. "Security" does not include:

27 (i) (1) an insurance or endowment policy or annuity contract
28 under which an insurance company promises to pay money either
29 in a lump sum or periodically for life or some other specified
30 period;

31 (ii) (2) a contract or trust agreement under which money is paid
32 pursuant to a charitable remainder annuity trust or a charitable
33 remainder unitrust (described in Section 664 of the Internal
34 Revenue Code), or a pooled income fund (described in Section
35 642(c)(5) of the Internal Revenue Code) or an annuity contract
36 under which the purchaser receives a charitable contribution
37 deduction under Section 170 of the Internal Revenue Code; or

38 (iii) (3) an interest in a limited liability company or limited
39 liability partnership if the person claiming that the interest is not
40 a security can prove that all of the members of the limited liability
41 company or limited liability partnership are actively engaged in
42 the management of the limited liability company or limited



C
O
P
Y

1 liability partnership.

2 (l) "State" means a state, territory, or possession of the United
3 States, the District of Columbia, and Puerto Rico.

4 (m) Corporations are "affiliated" during a period of time when either
5 is the owner of shares of the other representing and possessing fifty
6 percent (50%) or more of the total combined voting power of all classes
7 of stock issued by the other corporation and then outstanding and
8 entitled to vote.

9 (n) "Investment adviser" means a person who holds himself out to
10 be an investment adviser, or who, for compensation, engages in the
11 business of advising others, either directly or through publications or
12 writings, as to the value of securities or as to the advisability of
13 investing in, purchasing, or selling securities, or who, for compensation
14 and as a part of a regular business, issues and promulgates analyses or
15 reports concerning securities. "Investment adviser" does not include
16 any of the following:

- 17 (1) A bank, savings institution, or trust company.
18 (2) A lawyer, an accountant, an engineer, or a teacher whose
19 performance of these services is solely incidental to the practice
20 of the person's profession.
21 (3) A broker-dealer or its agent whose performance of these
22 services is solely incidental to the conduct of the broker-dealer's
23 business as a broker-dealer and who receives no special
24 compensation for them.
25 (4) A publisher of a bona fide newspaper, news column,
26 newsletter, news magazine, or business or financial publication or
27 service, by whatever means communicated, that does not render
28 advice on the specific investment situation of individual clients.
29 (5) An investment adviser representative.
30 (6) A person who is an investment adviser to an investment
31 company registered under the Investment Company Act of 1940
32 (15 U.S.C. 80a-1 et seq.).
33 (7) A person who is registered as an investment adviser under
34 Section 203 of the Investment Advisers Act of 1940 (15 U.S.C.
35 80b-3).
36 (8) A person who is excluded from the definition of investment
37 adviser under Section 202(a)(11) of the Investment Advisers Act
38 of 1940 (15 U.S.C. 80b-2).
39 (9) Other persons the commissioner may by rule or order
40 designate.

41 (o) "Transferable share" means a security representing an equity
42 interest in a corporation or business trust, but does not include the



C
O
P
Y

1 shares of open-end investment companies (as defined by the
2 Investment Company Act of 1940, as in effect on December 31, 1990).

3 (p) A "qualified transfer agent" means:

- 4 (1) a bank whose deposits are insured by the Bank Insurance Fund
5 of the Federal Deposit Insurance Corporation; or
6 (2) a person, independent of the issuer, approved by the
7 commissioner by regulation or by individual order in specific
8 cases.

9 (q) "Investment adviser representative" means a person, except a
10 person in a clerical or ministerial position:

- 11 (1) who is employed by or associated with an investment adviser
12 registered under this chapter; or
13 (2) who has a place of business located in Indiana and is
14 employed by or associated with a person required to be registered
15 as an investment adviser under Section 203 of the Investment
16 Advisers Act of 1940 (15 U.S.C. 80b-3); and
17 (3) who:

- 18 (A) makes recommendations or otherwise renders advice
19 regarding securities;
20 (B) manages accounts or portfolios of clients;
21 (C) determines recommendations or advice that should be
22 given regarding securities;
23 (D) solicits, offers, or negotiates the sale of or sells
24 investment advisory services; or
25 (E) supervises employees who perform a duty described in
26 this subsection.

27 (r) "Accredited investor" means a person who is within any of the
28 following categories, or who the issuer reasonably believes is within
29 any of the following categories, at the time of the sale of securities to
30 the person:

- 31 (1) A person who meets the definition of "accredited investor" (as
32 defined under the Securities Act of 1933 in 17 CFR 230.215), and
33 in any other rule or regulation modifying the definition adopted
34 by the Securities and Exchange Commission as in effect on
35 December 31, 1990.
36 (2) A person to whom an offer or sale may be made without
37 registration pursuant to section 2(b)(8) or 2(b)(9) of this chapter.
38 (3) Any other person the commissioner may designate by rule or
39 order.

40 (s) "Federal covered security" refers to a security described as a
41 covered security in Section 18(b) of the Securities Act of 1933 (15
42 U.S.C. 77r).



C
O
P
Y

1 **(t) "Viatical settlement contract" means an agreement for the**
 2 **purchase, sale, assignment, transfer, devise, or bequest of a portion**
 3 **of a death benefit or ownership of a life insurance policy or**
 4 **contract for consideration that is less than the expected death**
 5 **benefit of the life insurance policy or contract. The term does not**
 6 **include the following:**

7 **(1) A loan by an insurer under the terms of a life insurance**
 8 **policy, including a loan secured by the cash value of a policy.**

9 **(2) An agreement with a bank, savings bank, savings and loan**
 10 **association, credit union, or other licensed lending institution**
 11 **that takes an assignment of a life insurance policy as collateral**
 12 **for a loan.**

13 **(3) The provision of accelerated death benefits by an insurer**
 14 **to an insured under the provisions of a life insurance contract.**

15 **(4) Agreements between an insurer and a reinsurer.**

16 **(5) An agreement by a person who enters into not more than**
 17 **one (1) such agreement in any five (5) year period to purchase**
 18 **a life insurance policy or contract for the transfer of a life**
 19 **insurance policy for a value that is less than the expected**
 20 **death benefit.**

21 SECTION 2. IC 27-1-12-6 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) No policy of
 23 life insurance, other than industrial insurance, group life insurance or
 24 reinsurance, bearing a date of issue which is the same as or later than
 25 a transition date to be selected by the company pursuant to section 12
 26 of this chapter, such transition date in no event to be later than January
 27 1, 1948, shall be delivered or issued for delivery in this state or issued
 28 by a company organized under the laws of this state unless the same
 29 shall provide the following:

30 (1) That all premiums shall be payable in advance, either at the
 31 home office of the company, or to an agent of the company, upon
 32 delivery of a receipt signed by one (1) or more of the officers who
 33 shall be designated in the policy.

34 (2) For a grace period of not less than thirty (30) days for the
 35 payment of every premium after the first premium, which may be
 36 subject to an interest charge, during which period the insurance
 37 shall continue in force; provided, that if the insured shall die
 38 within such period of grace the unpaid premium for the current
 39 policy year may be deducted in any settlement under the policy.

40 (3) That the policy, together with the application therefor, a copy
 41 of which application shall be attached to the policy and made a
 42 part thereof, shall constitute the entire contract between the



C
O
P
Y

1 parties and shall:

2 **(A) except as provided in clause (B),** be incontestable after
 3 it shall have been in force during the lifetime of the insured for
 4 two (2) years from its date, or, at the option of the company
 5 after it shall have been in force for two (2) years from its date;
 6 **and**

7 **(B) in the event of fraud in connection with an application**
 8 **for life insurance benefits under a policy that is part of a**
 9 **viatical settlement contract (as defined in IC 27-8-19.8-6),**
 10 **be incontestable after the policy has been in force during**
 11 **the lifetime of the insured for six (6) years after the date of**
 12 **issue, or, at the option of the company after the policy has**
 13 **been in force for six (6) years after the date of issue;**

14 except for nonpayment of premiums, and except for violation of the
 15 conditions of the policy relating to naval and military service in time of
 16 war, and at the option of the company provisions relative to benefits in
 17 the event of total and permanent disability and provisions which grant
 18 additional insurance specifically against death by accident may also be
 19 excepted.

20 (4) That if the age of the insured and/or beneficiary, if that age
 21 enters into the determination of the premiums charged or benefits
 22 promised, has been misstated, the amount payable under the
 23 policy shall be such as the premium would have purchased at the
 24 correct age of the insured and/or beneficiary.

25 (5) That all statements made by the insured in the application
 26 shall, in the absence of fraud, be deemed representations and not
 27 warranties.

28 (6) That, in the case of participating policies, the policy shall
 29 participate in the surplus of the company as apportioned by the
 30 board of directors of the company, and that, beginning not later
 31 than the end of the fifth policy year, the company will determine
 32 and account for the portion of the divisible surplus so ascertained
 33 accruing on the policy, and that the owner of the policy shall have
 34 the right to have the current dividends arising from such
 35 participation paid in cash, and that at periods of not more than
 36 five (5) years, such accounting and payment at the option of the
 37 policyholder shall be had. The owner of the policy may elect to
 38 take any of the other dividend options in the policy. If the owner
 39 of the policy shall not elect any of the other dividend options
 40 provided in the policy, the apportioned dividends shall be held to
 41 the credit of the policy and be payable in cash at maturity of the
 42 policy or be withdrawable in cash at any anniversary of its date;



C
O
P
Y

1 provided, however, that if the policy shall contain a provision for
 2 an apportionment of the surplus at the end of the first policy year
 3 and annually thereafter, then and in that event, said policy may
 4 provide that each dividend shall be paid subject to the payment of
 5 the premium of the next ensuing year.

6 (7) Nonforfeiture provisions in accordance with the requirements
 7 of section 7 of this chapter.

8 (8) That the company, at any time while the policy is in force, will
 9 loan, on the execution of a proper assignment of the policy, and
 10 on the sole security thereof, at a specified rate of interest (payable
 11 in advance if the company so elects), a sum, which, together with
 12 the sum of:

13 (A) previously existing indebtedness, if any, including interest
 14 thereon to the end of the current policy year; and

15 (B) interest to the end of the current policy year on the amount
 16 newly loaned;

17 is equal to or, at the option of the insured, less than the cash
 18 surrender value at the end of the current policy year as provided
 19 for by the policy in accordance with the terms of section 7 of this
 20 chapter; provided, that the company may, as a condition precedent
 21 to the making of such loan, and at its own option, require the
 22 payment of the unpaid balance, if any, of the premium or
 23 premiums for the current policy year, and may require the
 24 payment of interest in advance on the total loan to the end of the
 25 current policy year. The policy may provide that, if interest on the
 26 loan is not paid when due, it shall be added to the existing loan
 27 and become a part thereof and bear interest at the same rate as the
 28 loan. It shall further be stipulated in the policy that failure to
 29 repay any such loan or pay interest thereon shall not void the
 30 policy unless such total indebtedness to the company shall equal
 31 or exceed such cash surrender value at the time of such failure,
 32 nor until thirty (30) days after notice shall have been mailed by
 33 the company to the last known address of the insured and to the
 34 assignee, if any, if such assignee has notified the company of his
 35 address. No condition other than as provided in this subdivision
 36 shall be exacted as prerequisite to any such loan. The company
 37 shall reserve the right to defer the granting of any loan, except
 38 when made to pay premiums on a policy or policies issued by it,
 39 for six (6) months after application therefor is made. The
 40 provisions of this subdivision shall not be required in term
 41 policies nor shall they apply to paid-up insurance issued or
 42 granted in exchange for lapsed or surrendered policies.



C
O
P
Y

1 (9) That, should there have been default in premium payment and
2 the value of the policy applied to the extension of the insurance,
3 and such insurance be in force and the original policy not
4 surrendered to the company and canceled, the policy may be
5 reinstated within three (3) years from the due date of the premium
6 in default, upon evidence of insurability satisfactory to the
7 company and payment of arrears of premiums with interest.

8 (10) That when a policy shall become a claim by the death of the
9 insured, settlement shall be made upon receipt of due proof of
10 death and of the interest of the claimant and not later than two (2)
11 months after receipt of such proof.

12 (11) A title on the face and on the back of the policy describing
13 the same.

14 (b) Any of the provisions of subsection (a) not applicable to single
15 premium policies shall to that extent not be incorporated therein. The
16 provisions of subsection (a) shall not apply to policies issued on
17 substandard, underaverage, or impaired risks. Any policy may be
18 issued or delivered in this state which in the opinion of the department
19 contains provisions on any one (1) or more of the several requirements
20 of subsection (a) more favorable to the policyholder than those required
21 in subsection (a).

22 SECTION 3. IC 27-1-12-41 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 41. (a) A policy of
24 group life insurance may not be delivered in Indiana unless it contains
25 in substance:

- 26 (1) the provisions described in subsection (b); or
- 27 (2) provisions that, in the opinion of the commissioner, are:
 - 28 (A) more favorable to the persons insured; or
 - 29 (B) at least as favorable to the persons insured and more
30 favorable to the policyholder;
- 31 than the provisions set forth in subsection (b).

32 (b) The provisions referred to in subsection (a)(1) are as follows:

33 (1) A provision that the policyholder is entitled to a grace period
34 of thirty-one (31) days for the payment of any premium due
35 except the first, during which grace period the death benefit
36 coverage shall continue in force, unless the policyholder has
37 given the insurer written notice of discontinuance in advance of
38 the date of discontinuance and in accordance with the terms of the
39 policy. The policy may provide that the policyholder is liable to
40 the insurer for the payment of a pro rata premium for the time the
41 policy was in force during the grace period.

42 (2) A provision that the validity of the policy may not be

C
O
P
Y



1 contested ~~except for nonpayment of premiums; after the policy~~
 2 has been in force for two (2) years after its date of issue; and that
 3 no statement made by a person insured under the policy relating
 4 to the person's insurability may be used in contesting the validity
 5 of the insurance with respect to which the statement was made;
 6 unless: **except as provided in clause (A), (B), (C), or (D):**

7 (A) the insurance has not been in force for a period of two (2)
 8 years or longer during the person's lifetime; **or The validity of**
 9 **a policy may be contested at any time for nonpayment of**
 10 **premiums.**

11 (B) the statement is contained in a written instrument signed
 12 by the insured person. **The validity of a policy may be**
 13 **contested based on a statement made by a person insured**
 14 **under the policy that relates to the person's insurability if:**

15 (i) the statement is set forth in a written instrument
 16 signed by the insured; and

17 (ii) the policy has not been in force for two (2) years after
 18 the date of issue.

19 (C) **The validity of a policy may be contested based on a**
 20 **statement made by a person insured under the policy that**
 21 **relates to the person's insurability if:**

22 (i) the policy has not been in force for at least two (2)
 23 years during the person's lifetime; and

24 (ii) the policy has not been in force for two (2) years after
 25 its date of issue.

26 (D) **The validity of a policy that is part of a viatical**
 27 **settlement contract (as defined in IC 27-8-19.8-6) may be**
 28 **contested on the grounds of fraud in connection with an**
 29 **application for life insurance benefits under the policy**
 30 **until the policy has been in force for six (6) years after the**
 31 **date of issue.**

32 However, a provision under this subdivision may not preclude the
 33 assertion at any time of defenses based upon provisions in the
 34 policy that relate to eligibility for coverage.

35 (3) A provision that a copy of the application, if any, of the
 36 policyholder must be attached to the policy when issued, that all
 37 statements made by the policyholder or by the persons insured are
 38 to be deemed representations and not warranties, and that no
 39 statement made by any person insured may be used in any contest
 40 unless a copy of the instrument containing the statement is or has
 41 been furnished to the insured person or, in the event of death or
 42 incapacity of the insured person, to the insured person's



C
O
P
Y

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

beneficiary or personal representative.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the person's coverage.

(5) A provision specifying an equitable adjustment of premiums, benefits, or both to be made in the event the age of a person insured has been misstated. A provision under this subdivision must contain a clear statement of the method of adjustment to be made.

(6) A provision that any sum becoming due by reason of the death of the person insured must be payable to the beneficiary designated by the person insured. However, if a policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of the sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of the sum not exceeding two thousand dollars (\$2,000) to any person appearing to the insurer to be equitably entitled to that payment by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement that:

- (A) explains the insurance protection to which the person insured is entitled;
- (B) indicates to whom the insurance benefits are payable;
- (C) explains any dependent's coverage included in the certificate; and
- (D) sets forth the rights and conditions that apply to the person under subdivisions (8), (9), (10), and (11).

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy, or on the dependent of a person covered, ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy, the person or dependent is entitled, without evidence of insurability, to an individual policy of life insurance issued to the person or dependent by the insurer without

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

disability or other supplementary benefits, provided that an application for the individual policy is made and that the first premium is paid to the insurer within thirty-one (31) days after the termination, and provided further that:

(A) the individual policy must, at the option of the person or dependent, be on any one (1) of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance;

(B) the individual policy must be in an amount not in excess of the amount of life insurance that ceases because of the termination, less the amount of any life insurance for which the person or dependent becomes eligible under the same policy or any other group policy within thirty-one (31) days after the termination (however, any amount of insurance that has matured on or before the date of the termination as an endowment payable to the person insured, whether in one (1) sum, in installments, or in the form of an annuity, may not, for the purposes of this clause, be included in the amount of insurance that is considered to cease because of the termination); and

(C) the premium on the individual policy must be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which the person or dependent then belongs, and to the individual age attained by the person or dependent on the effective date of the individual policy.

Subject to the conditions set forth in this subdivision, the conversion privilege created by this subdivision must be available to a surviving dependent of a person covered under a group policy, with respect to the coverage under the group policy that terminates by reason of the death of the person covered, and to the dependent of an employee or member after termination of the coverage of the dependent because the dependent ceases to be a qualified family member under the group policy, while the employee or member remains insured under the group policy.

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured under the policy at the date of the termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five (5) years before the termination date, is entitled to

C
O
P
Y



1 have issued by the insurer an individual policy of life insurance,
2 subject to the same conditions and limitations as are provided in
3 subdivision (8), except that the group policy may provide that the
4 amount of the individual policy may not exceed the lesser of:

5 (A) the amount of the person's life insurance protection that is
6 ceasing because of the termination or amendment of the group
7 policy, less the amount of any life insurance for which the
8 person is eligible or becomes eligible under a group policy
9 issued or reinstated by the same insurer or another insurer
10 within thirty-one (31) days after the termination; or

11 (B) ten thousand dollars (\$10,000).

12 (10) A provision that if a person insured under the group policy,
13 or the insured dependent of a covered person, dies during the
14 period within which the covered person or dependent would have
15 been entitled to have an individual policy issued under
16 subdivision (8) or (9) or before such an individual policy becomes
17 effective, the amount of life insurance that the covered person or
18 dependent would have been entitled to have issued under an
19 individual policy is payable as a claim under the group policy,
20 whether or not application for the individual policy or the
21 payment of the first premium for the individual policy has been
22 made.

23 (11) If active employment is a condition of insurance, a provision
24 that an insured may continue coverage during the insured's total
25 disability by timely payment to the policyholder of that portion,
26 if any, of the premium that would have been required for the
27 insured had total disability not occurred. The continuation of
28 coverage under this subdivision on a premium paying basis must
29 extend for a period of six (6) months from the date on which the
30 total disability started, but not beyond the earlier of:

31 (A) the date of approval by the insurer of continuation of the
32 coverage under any disability provision that the group
33 insurance policy may contain; or

34 (B) the date of discontinuance of the group insurance policy.

35 (12) In the case of a policy insuring the lives of debtors, a
36 provision that the insurer will furnish to the policyholder, for
37 delivery to each debtor insured under the policy, a certificate of
38 insurance describing the coverage and specifying that the death
39 benefit will first be applied to reduce or extinguish the
40 indebtedness.

41 (c) Subsections (b)(6) through (b)(11) do not apply to policies
42 insuring the lives of debtors. The standard provisions required under

C
O
P
Y



1 ~~IC 27-1-12~~ **this chapter** for individual life insurance policies do not
2 apply to group life insurance policies.

3 (d) If a group life insurance policy is on a plan of insurance other
4 than the group plan, it must contain a nonforfeiture provision that, in
5 the opinion of the commissioner, is equitable to the insured persons
6 and to the policyholder. However, group life insurance policies need
7 not contain the same nonforfeiture provisions as are required for
8 individual life insurance policies under ~~IC 27-1-12~~ **this chapter**.

9 SECTION 4. IC 27-8-19.8-6 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this
11 chapter, "viatical settlement contract" means a ~~written~~ **an agreement**
12 **between a viatical settlement provider and a viator under the terms of**
13 **which the viatical settlement provider gives anything of value to the**
14 **viator, which for the purchase, sale, assignment, transfer, devise, or**
15 **bequest of a portion of the death benefit or ownership of a life**
16 **insurance policy or contract for consideration that is less than the**
17 **expected death benefit of the life insurance policy in return for the**
18 **viator's assignment, bequest, devise, sale, or transfer of all of the death**
19 **benefit, certificate, or ownership of the insurance policy to the viatical**
20 **settlement provider: or contract.** The term does not include **the**
21 **following:**

22 (1) A loan by a life insurance company **an insurer** under the
23 terms of a life insurance policy, including a loan secured by the
24 cash value of a policy.

25 (2) **An agreement with a bank, savings bank, savings and loan**
26 **association, credit union, or other licensed lending institution**
27 **that takes an assignment of a life insurance policy as collateral**
28 **for a loan.**

29 (3) **The provision of accelerated death benefits by an insurer**
30 **to an insured under the provisions of a life insurance contract.**

31 (4) **Agreements between an insurer and a reinsurer.**

32 (5) **An agreement by a person who enters into not more than**
33 **one (1) such agreement in any five (5) year period to purchase**
34 **a life insurance policy or contract for the transfer of a life**
35 **insurance policy for a value that is less than the expected**
36 **death benefit.**

37 SECTION 5. An emergency is declared for this act.



C
O
P
Y

SENATE MOTION

Mr. President: I move that Senator Mrvan be added as second author to Senate Bill 233.

PAUL

C
o
p
y



COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 233, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 10, delete lines 12 through 42.

Delete pages 11 through 13.

Page 14, delete lines 1 through 19.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 233 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

C
O
P
Y



SENATE MOTION

Mr. President: I move that Senate Bill 233 be amended to read as follows:

Replace the effective dates in SECTIONS 1 through 3 with "[EFFECTIVE UPON PASSAGE]".

Page 1, line 5, strike "IC 23-2-1-15(a)" and insert "**section 15(a) of this chapter**".

Page 4, line 27, strike "(i)" and insert "**(1)**".

Page 4, line 30, strike "(ii)" and insert "**(2)**".

Page 4, line 37, strike "(iii)" and insert "**(3)**".

Page 7, line 42, delete "shall, except in the event of fraud," and insert "shall:

(A) except as provided in clause (B),"

Page 8, line 3, after "date" delete ", " and insert "**;** and

(B) in the event of fraud in connection with an application for life insurance benefits under a policy that is part of a viatical settlement contract (as defined in IC 27-8-19.8-6), be incontestable after the policy has been in force during the lifetime of the insured for six (6) years after the date of issue, or, at the option of the company after the policy has been in force for six (6) years after the date of issue;".

Page 8, line 4, begin a new line blocked left beginning with "except".

Page 10, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 3. IC 27-1-12-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 41. (a) A policy of group life insurance may not be delivered in Indiana unless it contains in substance:

- (1) the provisions described in subsection (b); or
- (2) provisions that, in the opinion of the commissioner, are:
 - (A) more favorable to the persons insured; or
 - (B) at least as favorable to the persons insured and more favorable to the policyholder;
 than the provisions set forth in subsection (b).

(b) The provisions referred to in subsection (a)(1) are as follows:

- (1) A provision that the policyholder is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder is liable to

SB 233—LS 6697/DI 97+



C
O
P
Y

the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.

(2) A provision that the validity of the policy may not be contested ~~except for nonpayment of premiums; after the policy has been in force for two (2) years after its date of issue; and that no statement made by a person insured under the policy relating to the person's insurability may be used in contesting the validity of the insurance with respect to which the statement was made; unless: except as provided in clause (A), (B), (C), or (D):~~

~~(A) the insurance has not been in force for a period of two (2) years or longer during the person's lifetime; or The validity of a policy may be contested at any time for nonpayment of premiums.~~

~~(B) the statement is contained in a written instrument signed by the insured person. The validity of a policy may be contested based on a statement made by a person insured under the policy that relates to the person's insurability if:~~

~~(i) the statement is set forth in a written instrument signed by the insured; and~~

~~(ii) the policy has not been in force for two (2) years after the date of issue.~~

~~(C) The validity of a policy may be contested based on a statement made by a person insured under the policy that relates to the person's insurability if:~~

~~(i) the policy has not been in force for at least two (2) years during the person's lifetime; and~~

~~(ii) the policy has not been in force for two (2) years after its date of issue.~~

~~(D) The validity of a policy that is part of a viatical settlement contract (as defined in IC 27-8-19.8-6) may be contested on the grounds of fraud in connection with an application for life insurance benefits under the policy until the policy has been in force for six (6) years after the date of issue.~~

However, a provision under this subdivision may not preclude the assertion at any time of defenses based upon provisions in the policy that relate to eligibility for coverage.

(3) A provision that a copy of the application, if any, of the policyholder must be attached to the policy when issued, that all statements made by the policyholder or by the persons insured are to be deemed representations and not warranties, and that no statement made by any person insured may be used in any contest

C
O
P
Y



unless a copy of the instrument containing the statement is or has been furnished to the insured person or, in the event of death or incapacity of the insured person, to the insured person's beneficiary or personal representative.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the person's coverage.

(5) A provision specifying an equitable adjustment of premiums, benefits, or both to be made in the event the age of a person insured has been misstated. A provision under this subdivision must contain a clear statement of the method of adjustment to be made.

(6) A provision that any sum becoming due by reason of the death of the person insured must be payable to the beneficiary designated by the person insured. However, if a policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of the sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of the sum not exceeding two thousand dollars (\$2,000) to any person appearing to the insurer to be equitably entitled to that payment by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement that:

(A) explains the insurance protection to which the person insured is entitled;

(B) indicates to whom the insurance benefits are payable;

(C) explains any dependent's coverage included in the certificate; and

(D) sets forth the rights and conditions that apply to the person under subdivisions (8), (9), (10), and (11).

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy, or on the dependent of a person covered, ceases because of termination of employment or termination of membership in the class or classes eligible for

C
O
P
Y

coverage under the policy, the person or dependent is entitled, without evidence of insurability, to an individual policy of life insurance issued to the person or dependent by the insurer without disability or other supplementary benefits, provided that an application for the individual policy is made and that the first premium is paid to the insurer within thirty-one (31) days after the termination, and provided further that:

(A) the individual policy must, at the option of the person or dependent, be on any one (1) of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance;

(B) the individual policy must be in an amount not in excess of the amount of life insurance that ceases because of the termination, less the amount of any life insurance for which the person or dependent becomes eligible under the same policy or any other group policy within thirty-one (31) days after the termination (however, any amount of insurance that has matured on or before the date of the termination as an endowment payable to the person insured, whether in one (1) sum, in installments, or in the form of an annuity, may not, for the purposes of this clause, be included in the amount of insurance that is considered to cease because of the termination); and

(C) the premium on the individual policy must be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which the person or dependent then belongs, and to the individual age attained by the person or dependent on the effective date of the individual policy.

Subject to the conditions set forth in this subdivision, the conversion privilege created by this subdivision must be available to a surviving dependent of a person covered under a group policy, with respect to the coverage under the group policy that terminates by reason of the death of the person covered, and to the dependent of an employee or member after termination of the coverage of the dependent because the dependent ceases to be a qualified family member under the group policy, while the employee or member remains insured under the group policy.

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured under the policy at the date of the

C
O
P
Y



termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five (5) years before the termination date, is entitled to have issued by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided in subdivision (8), except that the group policy may provide that the amount of the individual policy may not exceed the lesser of:

(A) the amount of the person's life insurance protection that is ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the person is eligible or becomes eligible under a group policy issued or reinstated by the same insurer or another insurer within thirty-one (31) days after the termination; or

(B) ten thousand dollars (\$10,000).

(10) A provision that if a person insured under the group policy, or the insured dependent of a covered person, dies during the period within which the covered person or dependent would have been entitled to have an individual policy issued under subdivision (8) or (9) or before such an individual policy becomes effective, the amount of life insurance that the covered person or dependent would have been entitled to have issued under an individual policy is payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium for the individual policy has been made.

(11) If active employment is a condition of insurance, a provision that an insured may continue coverage during the insured's total disability by timely payment to the policyholder of that portion, if any, of the premium that would have been required for the insured had total disability not occurred. The continuation of coverage under this subdivision on a premium paying basis must extend for a period of six (6) months from the date on which the total disability started, but not beyond the earlier of:

(A) the date of approval by the insurer of continuation of the coverage under any disability provision that the group insurance policy may contain; or

(B) the date of discontinuance of the group insurance policy.

(12) In the case of a policy insuring the lives of debtors, a provision that the insurer will furnish to the policyholder, for delivery to each debtor insured under the policy, a certificate of insurance describing the coverage and specifying that the death benefit will first be applied to reduce or extinguish the

C
O
P
Y



indebtedness.

(c) Subsections (b)(6) through (b)(11) do not apply to policies insuring the lives of debtors. The standard provisions required under ~~IC 27-1-12~~ **this chapter** for individual life insurance policies do not apply to group life insurance policies.

(d) If a group life insurance policy is on a plan of insurance other than the group plan, it must contain a nonforfeiture provision that, in the opinion of the commissioner, is equitable to the insured persons and to the policyholder. However, group life insurance policies need not contain the same nonforfeiture provisions as are required for individual life insurance policies under ~~IC 27-1-12~~ **this chapter**."

Page 10, after line 39, begin a new paragraph and insert:

"SECTION 5. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

(Reference is to SB 233 as printed January 25, 2000.)

PAUL

C
O
P
Y

